

## MINUTES

### **WARRICK COUNTY AREA BOARD OF ZONING APPEALS**

Regular meeting held in the Commissioners Meeting Room,  
Third Floor, Historic Courthouse,  
Boonville, Indiana  
February 22, 2016 at 6:00 P.M.

A moment of silence was held followed by the Pledge of Allegiance.

**MEMBERS PRESENT:** Jeff Valiant, Chairman, Tina Baxter, Terry Dayvolt, Doris Horn, Mike Moesner, Jeff Willis and Mike Winge.

Also present were Aaron Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer, Staff.

**MEMBERS ABSENT:** None

Roll call was taken and a quorum declared present.

#### **ADOPTION OF RULES AND REGULATIONS:**

Mrs. Rector informed the Board that the Plan Commission ruled to change their Rules of Procedure to have a guideline of 20 minutes presentation for the petitioner. She said any rebuttal they want to have will be from that 20 minutes as well and they should tell the Board how much they want to reserve for rebuttal before they begin their presentation. She said the remonstrators will also only have a 20 minute guideline. She said she would recommend this Board adopt the same rules.

Mike Moesner asked about comments from the Board.

Mrs. Rector said there is no time limit for questions or comments from the Board.

Mike Winge made a motion to adopt the Rules and Regulations. The motion was seconded by Doris Horn and unanimously carried.

**MINUTES:** Upon a motion by Mike Moesner and seconded by Jeff Willis, the Minutes of the last regular meeting held January 25, 2016, were approved as circulated.

#### **VARIANCE:**

##### **BZA-V-16-03**

**APPLICANT:** B.L. Bennett & Associates, Inc., Bruce Bennett, Owner.

**OWNER:** Route 66 Development, LLC, Bruce Bennett, Partner.

**PREMISES AFFECTED:** Property located on the E side of Grimm Rd. approximately 0' NE of the intersection formed by Grimm Rd. & Stahl Rd. & 0' NE of the intersection formed by Grimm Rd. & Warrick Trail, Ohio Twp. *Proposed lots 1-5 in proposed Warrick Trail Apartment Homes PUD. Complete legal on file.*

**NATURE OF CASE:** Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County to allow an Improvement Location Permit to be issued for a proposed apartment complex with an allowance to slope below the FPG (Flood Protection Grade) within 10' of the foundation of the structure but remain above the BFE (Base Flood Elevation) in a PUD/C-4 Planned Unit Development consisting of C-4 General Commercial zoning district. *Advertised in the Standard February 11, 2016.*

Jim Morley, Jr., Morley and Associates and Jay Kivett, Project Representative were present.

The Chairman called for a staff report.

Mrs. Rector said they have all the return receipts from certified mail of notice to the adjacent property owners except for Jesse Davis. She said we do have the white pay receipt showing it was mailed to the correct address and within the 21 day time requirement. She said the proposed use is a PUD for an apartment complex. She said the property to the North is zoned C-4 and PUD/C-4 being part of Arbor Pointe Subdivision; South is C-4 being currently vacant; East and West is vacant Agriculture. She said there is an approved primary plat on this property. She said the property lies entirely in an AE 100 year flood plain. She said the Base Flood Elevation (BFE) is 387.7 and the Flood Protection Grade (FPG) is 389.7. She said per our Flood Plain Ordinance ARTICLE VI Section 5 (B) (5) Structures Constructed on Fill *A residential or nonresidential structure may be constructed on a permanent land fill in accordance with the following: a.) The fill shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test method. b.) The fill should extend at least ten feet beyond the foundation of the structure before sloping below the FPG. c.) The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than 3 horizontal to 1 vertical. d.) The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties. e.) The top of the lowest floor including basements shall be at or above the FPG.* She added that each building will obtain a commercial driveway entrance. She said the applicant's statement is *The State model ordinance for flood hazard areas has been revised since the Warrick County Comprehensive Zoning Ordinance section for flood hazard areas was last amended on 6/11/2012. Article VI Section 5B (5)(b) of the Comprehensive Zoning Ordinance regulates that the fill used for a structure shall extend at least ten feet beyond the foundation of the structure before sloping below the FPG. The revised State model ordinance says that the fill shall extend at least ten feet beyond the structure before sloping below the BFE. Warrick County will begin the process for amending the Comprehensive Zoning Ordinance but we are requesting a variance to be able to continue forward with the project while the amendment process takes place.* She said she has spoken with Anita Nance at the DNR who concurred the model has changed and we will begin the process for amending our flood plain ordinance and it was her recommendation for them to file for this Variance and had no objection to the approval. Mrs. Rector said she is the floodplain administrator for Warrick County and we answer to DNR who represents FEMA. She said Anita Nance is over the Division of Water at the

DNR. She said Mr. Morley came into the office to meet with her about this matter and she would never suggest a Variance without speaking to the DNR first. She said at the time he came into the office is when they found out that the model ordinance had changed in 2013 and Warrick County could change theirs. She said if the ordinance would have been changed then there would be no need for the Variance this evening. Mrs. Rector said Ms. Nance suggested they go ahead and file for this Variance and in the meantime they could start the process to amend the ordinance. She said then passed out the DNR model. She said Mr. Morley can explain the engineering and sloping. She further added she also believes they plan on getting a Letter of Map Amendment on all of the structures as well.

Jim Morley stated he can go as technical as they want or he can answer their questions. He said this gets into building codes and math and he can get technical if they want or they can take it on the DNR recommendation for the change.

Mike Moesner said as he understands it they need to have ten feet away from the foundation before it starts to slope below the...

Jim Morley said below the 100 year flood elevation is what they are asking for.

Mike Moesner asked what the change is.

Mr. Morley passed out a three sheet handout to the Board. He said currently State Building Codes requires (unless it is at a sidewalk) you are supposed to have six inches of fall within the first ten feet away from the building to make sure the water doesn't sit up against the house. He said the DNR model code used to say and the way Warrick County adopted it says you have to go beyond ten feet before you can drop below the Flood Protection Grade. He said BFE is Base Flood Elevation and that is the 100 year flood and in theory that is how high the water gets once every 100 years. He said the Flood Protection Grade (FPG) is two feet above the BFE. He said that is how high the building has to be above the 100 year flood by State Code. He said the way the model ordinance that Warrick County has adopted says you have to come out ten feet before you can slope below the FPG. He said because building code says you have to slope six inches in the first ten feet; by default it made it so the minimum elevation was six inches above the FPG because model code wouldn't let you slope below the FPG within the first ten feet. Mr. Morley said it has always been their contention and a point they have successfully argued in a different county is there has always been an error in the model code and it always should have read sloping below the BFE and not the FPG. He said in another county they argued that and had it changed. He said honestly he didn't think the DNR comprehended the mistake they had in their code because honestly it is a lot of math and building codes and it gets a little harebrained to be honest.

Mr. Morley said Warrick County has not had a ton of development in the flood plain; a lot of the development has been out of the flood plain and so this ordinance never really got used. He said to be honest the few times it was used he doesn't know if people actually followed it. He said they try to follow the ordinances and knew this would be a challenge and that is why they are here tonight for the Variance. He said it was a delight to him when Mrs. Rector called Ms. Nance at DNR and she said they had changed their model code to be in agreement with what they

always felt was the truth-the correct elevation. He said with this particular project, if they would raise the entire project six inches over the FPG it will be an \$18,000 expense. He said that expense made it worthwhile to file the Variance given the fact the change they are requesting is in fact the change DNR has already made in their model code and the change that Warrick County is going to attempt to make to their code. He said the code change just won't come fast enough because they want to start pulling building permits within the next month or so and the ordinance wouldn't be changed by then so they asking for this Variance.

Jeff Willis asked if the County is going to change the code.

Mrs. Rector said she will have to prepare the ordinance. She said Darren Pearson with DNR has sent it to her. She said he is the person who comes to audit their permits. She said she is waiting for him to get back with her because what he sent to her has "fill in the blank" areas. She said she is looking to have this on the APC agenda in two weeks for the Board to tell her to go ahead and advertise it. She said it will be at least three months before it goes into effect because it also has to go before the County Commissioners.

Ascertaining there were no other questions from the Board and being no remonstrators present, the Chairman called for a motion.

Mike Winge made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is the ordinance is outdated and is going to be updated.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.

6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
  - a) Subject to an Improvement Location Permit being obtained.
  - b) Subject to a certified plot plan by a licensed engineer showing first floor of the structure is at or above the FPG and fill elevations ten feet from structure does not fall below the BFE.
  - c) Subject to certified "as built" being submitted after construction is completed or a LOMA being obtained.
  - d) Subject to a Building Permit being obtained.
  - e) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
  - f) Subject to all utility easement and facilities in place.

The motion was seconded by Doris Horn and unanimously carried.

**OTHER BUSINESS:**

None.

**ATTORNEY BUSINESS:**

None.

**EXECUTIVE DIRECTOR BUSINESS:**

Mrs. Rector said in 2011 this Board approved a Special Use for a woman to operate a dog kennel with no more than 12 dogs. She said the property has been sold and the new owner wants to keep the kennel, which she can, but she also wants to do dog grooming. She said she will start out with the dogs she is kenneling but then she wants to open up to the public. She said dog grooming was not in the original approval, it was just for the kennel.

Jeff Willis asked if there could be any signage.

Mrs. Rector said signage is not allowed. She said the only things she has seen in the past with dog grooming is some people did them as a home occupation and if they were on septic they would have to get approval from the Health Department. She said that is only if you bring the dog to the house, got it groomed and came back and picked it up. She said if they were going to sell products like shampoo, leashes or collars then it had to be in a commercial zoning because you can't sell products with a home occupation. She said she doesn't know if the dog grooming will fall under this Special Use or if the new owner will have to come back and amend the application. She said there were a couple of remonstrators at the meeting for the original approval.

Tina Baxter asked if it was about traffic.

Mrs. Rector said it was about the dogs barking.

Mike Winge said maybe they should hear the remonstrators because one application it was ten times worse.

Mrs. Rector said there were more dogs in the neighborhood than what the woman was going to have in her kennel.

Mike Winge said you couldn't tell one bark from the next.

Mrs. Rector said she decided to ask for the Board's opinion on this.

Mike Winge said if she isn't selling product then he doesn't see a problem with it. He said if you are boarding a dog you will give them a bath anyway.

Mike Moesner said he doesn't see anything wrong with that.

Mrs. Rector said the woman wants to eventually have people bring their dog for grooming and not kennel it.

Mike Winge said that could be a traffic issue.

Mrs. Rector said that is why she is asking the Board.

Mike Winge asked if there is plenty of parking; that could be a big issue if she is having three or four people coming in at one time.

Mrs. Rector said she just has her driveway but if it is just the woman she will probably have one dog at a time and maybe have two waiting.

Tina Baxter said usually it isn't too many, one comes in and one gets picked up but some may wait to pick up after they get off work.

Jeff Valiant said it wouldn't be any different than people dropping off or picking up their dog from the kennel, they could have all twelve show up at the same time.

Tina Baxter said usually you have going and coming every day.

Mike Winge said if she has the kennel plus the grooming it could be a problem.

Several Board members spoke at once.

Mike Moesner asked if there have been any complaints from the neighbors since this was approved.

Mrs. Rector said there have not been any complaints.

Mike Winge said then he would just say she can have the grooming but she can't have any retail sales.

Jeff Willis said it is clear that there will be dog barking there because of the kennel and there will be dog barking at the grooming place just the same.

Mike Winge said if there becomes a problem with traffic or other problems arise they can call her back up.

Mrs. Rector said she also can't have any signage.

Discussion ensued over the location and the size of the property.

Mrs. Rector asked if the twelve dogs allowed for the kennel mean total dogs including the dogs being groomed or if the grooming dogs are above the 12 kennel dogs.

Tina Baxter said if they are not staying over then they shouldn't count but there should be no more than twelve in the kennel.

Jeff Willis asked about personal dogs to which he was informed they didn't count in the kennel number.

Discussion ensued over the number of dogs you can have in your home.

Mrs. Rector said if you have four or more weaned dogs you have to have a kennel.

Mike Winge made a motion to allow dog grooming with the BZA-SU-11-20 Special Use as long as there were no retail sales. The motion was seconded by Doris Horn and unanimously carried.

Being no other business the meeting adjourned at 6:30 p.m.

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Jeff Valiant, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held February 22, 2016.

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Sherri Rector, Executive Director